IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

WP(C).No. 19881 of 2004(P)

PETITIONER:

JUNION JOHN, S/O.K.M.JOHN, AGED 35 YEARS
R/A.KANIYAMKUNNEL HOUSE, KANAKKARI VILLAGE,
MEENACHIL TALUK, KOTTAYAM, POLICE CONSTABLE OF THE
5TH K.A.P.BATTALLION,RAMAVARMAPURAM, THRISSUR,
(TERMINATED).

BY ADV. SRI.A.X.VARGHESE

RESPONDENTS:

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1. STATE OF KERALA, REP. BY ITS SECRETARY,
HOME DEPARTMENT, SECRETARIAT, THIRUVNANTHAPURAM.

2. THE DEPUTY INSPECTOR GENERAL OF POLICE,
K.A.P.BATTALLION, THIRUVANANTHAPURAM.

3. THE BATTALLION COMMANDER, K.A.P.5TH
BATTALLION, RAMAVARMAPURAM, THRISSUR.

4. THE DIRECTOR,
HEALTH DEPARTMENT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SMT.T.B.RAMANI.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

EXT.P1: PHOTOCOPY OF M.R.I. SCAN REPORT.

EXT.P1(A): PHOTOGRAPHS OF SPINE EXERCISE

.EXT.P2: PHOTOCOPY OF MEMO OF CHARGES DT.15/5/97.

EXT.P3: TRUE COPY OF PUNISHMENT ROLL.

EXT.P4: PHOTOCOPY OF SHOW CAUSE NOTICE DT. 2/9/97.

EXT.P5: PHTOCOPY OF REMOVAL ORDER DT. 28/10/97.

EXT.P6: PHOTOCOPY OF MEDICAL CERTIFICATE DT. 27/5/98.

EXT.P7: PHOTOCOPY OF REPRESENTATION DT. 3/12/1999.

EXT.P8: PHOTOCOPY OF JUDGMENT IN OP.3516/01 DT. 15/1/2003.

EXT.P9: PHOTOCOPY OF COMMUNICATION DT. 20/8/2003.

EXT.P10: PHOTOCOPY OF LETTER DT. 28/8/2003.

EXT.P11: PHOTOCOPY OF COMMUNICATION DT. 1/9/2003.

EXT.P12: PHOCOPY OF COMMUNICATION DT. 1/10/2003.

EXT.P13: PHOTOCOPY OF REPORTS DT. 10/10/2003.

EXT.P14: PHOTOCOPY OF SCAN REPORT DT. 27/10/2003.

EXT.P15: PHOTOCOPY OF INFORMATION PASSED TO PETR. BY R4 DT. 17/4/2004.

A.K. Basheer, J.

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W.P(C) No. 19881 of 2004

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Dated this the 23rd day of November, 2007.

J U D G M E N T

Petitioner who was initially recruited as a Police Constable had admittedly failed to complete the training course. He had abstained from the training programme after producing a medical certificate. The Medical Board had found the petitioner fit to undergo training. Though the commandant in charge of the training had directed the petitioner to report for training since the Medical Board had declared him to be fit to continue training, petitioner had refused to attend the training camp. Consequently disciplinary proceedings were initiated against him. An enquiry was conducted. The Enquiry Officer found that the charge levelled against the petitioner was proved. The report was accepted and after hearing the petitioner he was removed from service. The Review Petition preferred before the Government was initially dismissed without hearing the petitioner. But, later petitioner was heard in compliance with the direction issued by this Court in O.P.No.3516/2001. It is the case of the respondents that by order dated February 23, 2004 in G.O.(Rt) 471/04/Home, the request made by the petitioner in the Review Petition was declined.

2. In this Original Petition the primary prayer is to issue a writ of certiorari to quash Exts.P3, P4 and P5 which are the memo of charges, show cause notice and order of termination etc. The other prayer is to issue a writ of mandamus to respondents 1 to 3 to allow

the petitioner to change his category either to the ministerial cadre or to any other appropriate cadre considering it as a special case.

3. It is not in dispute that petitioner had abstained from the training course after his recruitment. A perusal of the Kerala Police Subordinate Service Rules shows that training for a period of 9 months is mandatory. The reason stated by the petitioner not to attend the training was that he was not medically fit. But the Medical Board on examination of the petitioner had found him fit. Nevertheless petitioner had abstained from the training camp and it was therefore that disciplinary proceedings were initiated against him and he was removed from service. Petitioner has not challenged the finding entered against him in the enquiry report by the Enquiry Officer. What has been challenged by him is only the order of termination. I do not find any reason to quash Ext.P5 order especially for the reason that before terminating from service petitioner was admittedly heard.

4. It is also on record that after the dismissal of the Review Petition, the Government had directed the petitioner to appear before a Medical Board. The petitioner was examined by an Orthopaedician and a Neurosurgeon. The Board had found that petitioner was not orthopaedically fit to serve as a Police Constable. That was also one reason why the Government had apparently declined the request of the petitioner to reinstate him in service as Police Constable.

5. It is contended by the learned counsel that petitioner's request for category change ought to have been allowed, since he could not have been removed from service. He has also invited my attention to a

circular bearing No. 131867/Rules/72/PD dated September 14, 1973, especially to clause 5 therein. Having perused the said circular I do not find any reason to place reliance on it, since the said clause referred to above relates only to exercise of power of relaxation of Rules, under the General Rules. As mentioned earlier, petitioner had not successfully completed the training programme and therefore he had become ineligible to be absorbed and taken in service as a full member. Without becoming a full member, he could not have sought for category change merely for the reason that he was initially recruited as a Police Constable. Therefore the view taken by the Government rejecting the request made by the petitioner for category change either in the ministerial cadre or in any other appropriate cadre cannot be faulted at all.

There is no merit in the writ petition. It is accordingly dismissed.

A.K. Basheer
Judge.

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